

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Mike & Erin Luft-Wiskus,
Petitioners-Appellants.

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-0440
Parcel No. 171/00184-750-108

On December 16, 2011, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The appellants, Mike and Erin Luft-Wiskus, were self-represented. The Polk County Board of Review designated Assistant County Attorney David Hibbard as its representative. The Appeal Board now having examined the entire record, having heard the testimony, and being fully advised, finds:

Findings of Fact

Mike and Erin Luft-Wiskus, owners of property located at 1539 3rd Avenue, SE, Altoona, Iowa, appeal from the Polk County Board of Review decision reassessing their property. The real estate was classified residential for the January 1, 2011, assessment and valued at \$171,200; representing \$40,000 in land value and \$131,200 in dwelling value.

Luft-Wiskus protested to the Board of Review that the property was not equitably assessed compared to other like properties under Iowa Code section 441.37(1)(a), and that the property was assessment for more than authorized by law under section 441.37 (1)(b). The protest also mentioned an error in the assessment. However, the error claim was only in reference to an equity comparable being under-valued. Therefore, we will not consider this a separate ground. The Board of Review granted partial relief and reduced the total value to \$160,000; representing \$40,000 in land value and

\$120,000 in dwelling value. The value was reduced “because market data did not support the assessment.”

Luft-Wiskus then appealed to this Board asserting the same grounds. Luft-Wiskus seeks \$12,000 in relief and values the property at \$148,000.

The subject property consists of a two-story, frame dwelling built in 2004 and having 1416 total square feet of living area, 666 square feet on the main level and 750 square feet on the upper level. The subject property has a 420 square foot attached garage and a 324 square foot wood deck. The dwelling is in normal condition, has an average quality construction (4-05), and the site consists of 0.178 acres.

Erin Luft-Wiskus testified at hearing for the Luft-Wiskus. She testified regarding eight equity comparable properties in her neighborhood. She described the differences between the comparable properties and the subject property with regards to assessed value, land value, total square feet of living area, dollar per square foot of assessed value and any visible improvements that exist.

Luft-Wiskus testified that, in her opinion, assessed value is different than market value. In her opinion she believes that she could not get more than \$150,000 if she was to sell. She also stated the assessment was probably at market value, but the assessed value should be lowered for property tax purposes.

Luft-Wiskus did not make adjustments to the comparables, nor did she provide comparable market sales to support her claim that the subject should be assessed at \$148,000. Luft-Wiskus questioned the Board of Review appraiser analysis that states her comparables are in a different geoblock and the dividing line is the other side of the street. She believes this is an incorrect analysis of the market in the neighborhood. Luft-Wiskus is of the opinion that in the future, neighboring properties should be adjusted upward to reflect the difference in size and other conditions for equitable assessments to the subject property.

The Board of Review produced no additional evidence or witnesses. The certified record includes the Board of Review's analysis of three comparable sales. The adjusted sales prices of these properties ranged from \$148,078 to \$159,271, or \$98.19 to \$107.50 per square foot. The subject property is assessed, after the Board of Review adjustment, at \$160,000, or \$113 per square foot. While the appraiser analysis suggests the property's market value is \$157,630, we are unable to determine if a reduction from \$160,000 to \$157,630 is supported based on the data presented.

After reviewing all the evidence, we find Luft-Wiskus failed to provide persuasive evidence in support of either her inequity claim or market value claim. The equity comparables do not show her property is assessed higher than comparables properties, and she did not submit evidence of comparable sales to establish the property is assessed for more than authorized by law.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value

established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a). This statutory framework contradicts Luft-Wiskus's assertion that properties should be valued for tax assessment purposes lower than market value.

To prove inequity, a taxpayer must show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagles Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa, 133 N.W.2d 709 (Iowa 1965). The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). Luft-Wiskus did provide evidence in an attempt to show the property was inequitably assessed, although the assessments were not adjusted. Since these are similar tract homes, they could be reasonable comparables even without adjustments. However, Luft-Wiskus did not show that the properties were inequitably assessed under *Maxwell* or *Eagle Foods*. There was nothing to indicate that an assessment method was not uniformly applied, and there was no evidence of market value from sales to calculate the ratio set forth in *Maxwell*.

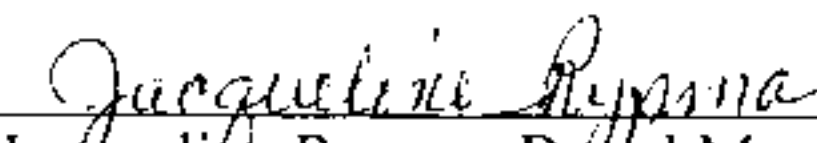
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Luft-Wiskus did not show that the property was assessed for more than authorized by law and did not prove a market value that is less than the assessment.

Viewing the evidence as a whole, we determine that substantial evidence is lacking to support Luft-Wiskus' equity claim or claim of over-assessment as of January 1, 2011. We, therefore, affirm the Luft-Wiskus property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2011, is \$160,000.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of the Luft-Wiskus property located in Altoona, Iowa, as determined by the Polk County Board of Review is affirmed.

Dated this 23 day of March 2012.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>3-23</u> , 201 <u>2</u>	
By	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
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